

**ASSEMBLY BILL**

**No. 1398**

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**Introduced by Committee on Labor and Employment (Swanson  
(Chair), Alejo, Allen, Furutani, and Yamada)**

February 28, 2011

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An act to amend Section 351 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1398, as introduced, Committee on Labor and Employment. Compensation: gratuities.

Existing law prohibits an employer or agent from collecting, taking, or receiving any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deducting any amount from wages due an employee on account of a gratuity, or requiring an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Existing law declares that every gratuity is the sole property of the employee or employees to whom it was paid, given, or left for.

This bill would make nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 351 of the Labor Code is amended to  
2     read:  
3     351. ~~No~~An employer or agent shall *not* collect, take, or receive  
4     any gratuity or a part thereof that is paid, given to, or left for an

1 employee by a patron, or deduct any amount from wages due an  
2 employee on account of a gratuity, or require an employee to credit  
3 the amount, or any part thereof, of a gratuity against and as a part  
4 of the wages due the employee from the employer. Every gratuity  
5 is hereby declared to be the sole property of the employee or  
6 employees to whom it was paid, given, or left for. An employer  
7 that permits patrons to pay gratuities by credit card shall pay the  
8 ~~employees~~ *employee* the full amount of the gratuity that the patron  
9 indicated on the credit card slip, without any deductions for any  
10 credit card payment processing fees or costs that may be charged  
11 to the employer by the credit card company. Payment of gratuities  
12 made by patrons using credit cards shall be made to the ~~employees~~  
13 *employee* not later than the next regular payday following the date  
14 the patron authorized the credit card payment.